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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,628	01/28/2004	Debra L. Harp	FIREPLACE	3748
7590	12/02/2004		EXAMINER	YEUNG, JAMES C
Kevin Lynn Wildenstein Southwest Intellectual Property Svcs., LLC Suite 8 6700-B Jefferson NE Albuquerque, NM 87109			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 12/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/766,628	HARP ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	James C Yeung	3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-13,16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hiser. The structure and method as claimed are fully anticipated by Hiser.

In particular, Hiser shows in Figs. 3-4 a fireplace reflective system for use within a fireplace (18) comprising at least one light or reflective material (110 and/or col. 6, lines 39-46) having a viewable and coupling surface, the system measured substantially fit within, and coupled to, one or more interior surfaces (20,22) of the fireplace (18).

3. Claims 1-4, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Georgantas. The structure and method as claimed are fully anticipated by Georgantas.

In particular, Georgantas shows in Figs. 1-7 a fireplace reflective system for use within a fireplace (20) comprising at least one light or reflective material (26 and/or col. 3, lines 54-57) having a viewable and coupling surface, the system measured substantially fit within, and coupled to, one or more interior surfaces of the fireplace (20).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiser in view of Rose

Meyers teaches the use of a flame simulator (10, Fig. 1) for the purpose of generating and producing an illusion of burning logs within a fire chamber.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the fireplace of Hiser with a flame simulator such as taught by Rose in order to generate and producing an illusion of burning logs within the fireplace.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kasulis is cited to show an apparatus for enhancing the visual effect of a fire by employing a plurality of glass mirrors.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C Yeung whose telephone number is 703 272-4883. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JY  
November 29, 2004

  
James C. Yeung  
Primary Examiner